

No. 10245

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

CHARLES CHAPLIN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

vs.

CHARLES CHAPLIN,

Respondent.

REPLY BRIEF FOR PETITIONER,
CHARLES CHAPLIN.

FILED

MAR 10 1943

PAUL P. O'BRIEN,
CLERK

LOYD WRIGHT,
CHARLES E. MILLIKAN,
HERSCHEL B. GREEN,
1125 Board of Trade Building, Los Angeles,
Attorneys for Petitioner, Charles Chaplin.

TOPICAL INDEX.

PAGE

I.

This court is entitled to review the conclusion reached by the Board of Tax Appeals that the shares of stock here involved did not become the property of petitioner, Charles Chaplin, until delivered by the depositary to him.....	2
--	---

II.

The validity of the ultimate finding of the board is to be tested by what in fact was done rather than by the mere form of words used in the writings employed.....	3
Conclusion	5

TABLE OF AUTHORITIES CITED.

CASES.	PAGE
Bogardus v. Commissioner, 302 U. S. 34, 39, 82 L. Ed. 32.....	2
Commissioner of Internal Revenue v. Boeing, 106 F. (2d) 305....	2
Commissioner of Internal Revenue v. Southern Bell Telephone & Telegraph Co., 102 F. (2d) 397.....	4
Farish v. Commissioner of Internal Revenue, 103 F. (2d) 63....	3
Hawke v. Commissioner of Internal Revenue, 109 F. (2d) 946..	2
Helvering v. Tex-Penn Oil Co., 300 U. S. 481, 491, 81 L. Ed. 755	2, 4

STATUTES.

Constitution of the United States, Sixteenth Amendment.....	4
---	---

No. 10245

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

CHARLES CHAPLIN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

vs.

CHARLES CHAPLIN,

Respondent.

REPLY BRIEF FOR PETITIONER, CHARLES CHAPLIN.

As most of the argument presented in the brief for Commissioner is answered in the brief for petitioner, Charles Chaplin, heretofore filed, this reply will be addressed to only two points which we feel require any special comment.

I.

This Court Is Entitled to Review the Conclusion Reached by the Board of Tax Appeals That the Shares of Stock Here Involved Did Not Become the Property of Petitioner, Charles Chaplin, Until Delivered by the Depositary to Him.

At page 19 of the brief for Commissioner it is argued that "the issue here is whether the evidence *requires* a conclusion contrary to that which was reached below." The point of the argument for Commissioner seems to be that where the Board of Tax Appeals announces a conclusion of law, that conclusion is binding upon this court if it can be said that there was any substantial evidence in the record to support it.

This is not the law. It is well settled, by a long line of decisions, including those of this court,

"The ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact. It is to be distinguished from the findings of primary, evidentiary or circumstantial facts. It is subject to judicial review and, on such review, the court may substitute its judgment for that of the Board."

The above quotation is taken from *Helvering v. Tex-Penn Oil Co.*, 300 U. S. 481, 491; 81 L. Ed. 755, 762. To the same effect is the decision of the Supreme Court in the case of *Bogardus v. Commissioner*, 302 U. S. 34, 39, 82 L. Ed. 32, 36.

The foregoing statement of the rule is approved and carefully considered by this court in the case of *Commissioner of Internal Revenue v. Boeing*, 106 F. (2d) 305, 308, and also in the case of *Hawke v. Commissioner of Internal Revenue*, 109 F. (2d) 946, 950.

The decision of the Board of Tax Appeals makes findings of “primary, evidentiary and circumstantial facts” from which that court made the ultimate finding or conclusion of law that the stock in question was not the property of Mr. Chaplin until the year 1935, when the certificates evidencing said shares were delivered by the depository to Mr. Chaplin. It is plain that under the rule of the decisions above referred to, as well as other decisions on the same question which are cited on page 19 of the brief for petitioner, Charles Chaplin, this court not only has the jurisdiction so to do, but indeed, it has the duty fully to consider the matter and to substitute its own judgment for that of the Board of Tax Appeals if it shall conclude that the Board of Tax Appeals was mistaken in the conclusion reached. See also *Farish v. Commissioner of Internal Revenue*, 103 F. (2d) 63, 64.

II.

The Validity of the Ultimate Finding of the Board Is to be Tested by What in Fact Was Done Rather Than by the Mere Form of Words Used in the Writings Employed.

It is argued in the brief for Commissioner that because the stock was delivered into “escrow” rather than having first been delivered to Mr. Chaplin and then pledged by him to United Artists Corporation, there can be no possible validity to the claim that the transaction involved was in fact a security transaction. This argument is not logical. An agreement which takes the form of an “escrow” may as well be one for security as for any other purpose. If the parties themselves treated the transaction as one by which title to the stock was vested in Mr. Chaplin and he became the owner thereof, the fact that it was delivered

by the corporation to an "escrow" does not change the essential characteristics of the transactions between the parties. The Commissioner apparently contends, at page 25, that a deed is delivered as an escrow when the delivery is conditional and from that asks that the conclusion be reached that because it was an escrow it could not be a transaction wherein the escrow holder held the certificates as security.

It is well established that in applying the provisions of the Sixteenth Amendment of the Constitution and income tax laws enacted thereunder, courts should regard substance rather than mere form and should give effect to the intention of the parties as shown by all the facts and circumstances surrounding the transaction.

Helvering v. Tex-Penn Oil Co., 300 U. S. 481, 493.
81 L. Ed. 755, 763;

Commissioner of Internal Revenue v. Southern Bell Telephone & Telegraph Co., 102 F. (2d) 397, 402.

In the instant case, the Board of Tax Appeals made its preliminary, evidentiary and circumstantial findings in accordance with the evidence offered and received on behalf of the petitioner, Charles Chaplin, and this evidence shows without any substantial contradiction that the real purpose and intention of the parties was at all times to make Mr. Chaplin the owner of the stock at the time the stock was delivered to the depositary, subject to defeasance in the event Mr. Chaplin failed to perform his contract to deliver pictures to the corporation.

Conclusion.

Other points raised in the brief for the Commissioner are fully covered in the brief for petitioner, Charles Chaplin, heretofore filed and the argument advanced in petitioner's brief will not be here repeated. This applies particularly to the argument in the Commissioner's brief that the decision of the Board on the question of dividends is erroneous.

The decision of the Board of Tax Appeals should be reversed on the taxpayer's appeal and affirmed on the Commissioner's appeal.

Respectfully submitted,

LOYD WRIGHT,

CHARLES E. MILLIKAN,

HERSCHEL B. GREEN,

1125 Board of Trade Building, Los Angeles,
Attorneys for Petitioner, Charles Chaplin.

